

## Temporary Flexibility on I-9 Requirements During the COVID-19 Pandemic

On March 20, 2020, the Department of Homeland Security (DHS) announced that it will exercise discretion and flexibility in employment verification requirements for employers temporarily shifting to remote working conditions because of the COVID-19 pandemic. The new measures will remain in effect for a period of 60 days until May 18, 2020, or until three business days after the National Emergency terminates, whichever comes first. The new measures temporarily allow employers who are operating remotely to conduct the I-9 verification process through electronic means, such as video links, e-mail or fax.

Although the DHS has expressed that no exceptions are being made for in-person I-9 document verification for employers who have employees physically present at a work location, the DHS will make case by case analysis when:

1. the company representative responsible for I-9 completion is remote or inaccessible;
2. physical proximity restrictions are in effect; or
3. if newly hired employees or existing employees are subject to COVID-19 quarantine or lockdown protocols.

Employers taking physical proximity precautions and completing I-9s remotely should consider the following:

1. As always, employers must complete Form I-9 on or before the first day of employment as well as obtain, inspect, and retain copies of the documents within three (3) business days.
2. Must provide written documentation of their remote onboarding and telework policy for each employee.
3. Employers may still rely on the authorized representatives to act on their behalf to complete and sign Form I-9; however, the employer remains liable for any violations in connection with the form or verification process.
4. Once normal operations resume, all employees who were onboarded using a remote verification process must report to their employer within three business days for in-person verifications of identity and employment eligibility documents.
  - a. Employers must enter “COVID-19” as the reason for the physical inspection delay in the Section 2 Additional Information field **once physical inspection takes place after normal operations resume**. Once the documents have been physically inspected, the employer should add “documents physically examined” with the date of inspection to the Section 2 additional information field on the Form I-9, or to section 3 as appropriate.
  - b. If the company representative who originally completed the I-9 document review is unavailable for the physical re-examination, a new Section 2 should be completed and signed by the employer.
  - c. The employee may present original documents of their choice pursuant to the List A, B and C requirements and the documents do not have to be those previously furnished through the remote review process.
  - d. If the underlying documents of the employees expired prior to the subsequent in-person review, the employee must present valid documents for the re-verification process.

Finally, if employers have a Notice of Inspection served during March, to which no response has been issued, the DHS has granted an automatic 60-day extension from the effective date.

Our COVID-19 multidisciplinary taskforce, including Labor and Employment and Business and Family Immigration law practitioners, is available to assist clients address questions and legal and practical considerations pertaining to this evolving topic.

*This document has been prepared for information purposes only and is not intended, and should not be relied upon, as legal advice. If you have any questions or wish to obtain more information related thereto, or about its possible effect(s) on policy or operational matters, please contact us at your convenience.*

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